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United States Attorney  
District of Hawaii

ORIGINAL

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

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Attorneys for Federal Defendant

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

RAYMOND WARE,	)	CIVIL NO. 04-00671 HG LEK
	)	
Plaintiff,	)	STIPULATED JOINT JURY
	)	INSTRUCTIONS
vs.	)	
	)	Date: March 11, 2008
MICHAEL CHERTOFF, Secretary,	)	Time: 9:00 a.m.
DEPARTMENT OF HOMELAND	)	Judge: Helen Gillmor
SECURITY,	)	
Defendant.	)	
	)	

STIPULATED JOINT JURY INSTRUCTIONS

The undersigned parties hereby stipulate to the  
following court's general jury instructions:

Instruction No. 1;

Instruction No. 2B (modified to change  
"corporation" to "government and its employees");

Instruction No. 3;

Instruction No. 4;

Instruction No. 5;

Instruction No. 6;

Instruction No. 7;

Instruction No. 9;

Instruction No. 10;

Instruction No. 11;

Instruction No. 13;

Instruction No. 14;

Instruction No. 16 (modified to change  
"corporation" to "government agency");

Instruction No. 17B;

Instruction No. 20; and

Instruction No. 22.

The parties further stipulate to the following joint  
specific jury instructions:

Instruction No. 1 (attached); and

Instruction No. 2 (attached).

DATED: Honolulu, Hawaii, March \_\_\_\_, 2008.

EDWARD H. KUBO, JR.  
United States Attorney  
District of Hawaii

  
\_\_\_\_\_  
DAPHNE E. BARBEE  
Attorney for Plaintiff

By   
\_\_\_\_\_  
THOMAS A. HELPER  
Assistant U.S. Attorney

Attorneys for Federal  
Defendant

JOINT SPECIFIC JURY INSTRUCTION NO. 1

You have heard evidence that the defendant's treatment of the plaintiff was motivated by the plaintiff's status and also by other lawful reasons. If you find that the plaintiff's prior EEO complaint or race was a motivating factor in the defendant's treatment of the plaintiff, the plaintiff is entitled to your verdict, even if you find that the defendant's conduct was also motivated by a lawful reason. However, if you find that the defendant's treatment of the plaintiff was motivated by both plaintiff's prior EEO complaint or race and lawful reasons, you must decide whether the plaintiff is entitled to damages. The plaintiff is entitled to damages unless the defendant proves by a preponderance of the evidence that the defendant would have treated plaintiff similarly even if plaintiff's race had played no role in the employment decision.

See Desert Palace, Inc. v. Costa, 539 U.S. 90, 97 (2003).

JOINT SPECIFIC JURY INSTRUCTION NO. 2  
Compensatory Damages - Non Pecuniary

In you find that the plaintiff has proven by a preponderance of the evidence that defendant illegally discriminated against him or retaliated against him for opposing the illegal discrimination, you must consider whether he is entitled to compensatory damages.

The plaintiff has claimed that, because of the defendant's illegal discrimination, he suffered emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life. Compensatory damages are intended to make a victim whole for such injuries. If you find that the plaintiff has proven this by a preponderance of the evidence, you must award him compensatory damages for those injuries.

No evidence of the monetary value of such pain and suffering has been, or needs to be, introduced into evidence. No exact standard exists for fixing the compensation to be awarded for these injuries. The monetary damages that you award must be reasonable and fair compensation.

When considering the monetary amount of compensatory damages to which a victim is entitled, you should consider the nature, character, and seriousness of any emotional pain, suffering, inconvenience, mental anguish, or loss of enjoyment of life that he felt. You must also consider its extent and duration, as any award you make must cover the damages endured by

the victim since the wrongdoing to the present time, and even into the future if you find as fact that the proofs presented justify the conclusion that the victim's emotional stress and its consequences have continued to the present time or can reasonably be expected to continue in the future.

Adapted from Bello, Desmarais, Harrison, Model Jury Instructions, Employment Litigation § 1.07[3] (1994); Devitt, Blackmar and Wolff, Federal Jury Practice and Instructions §§ 104.05, 104.06, 104A.11 (4<sup>th</sup> Ed. 1987 & Supp. 1995); 42 U.S.C. § 1981a and b.